

MEDICAL MALPRACTICE REVISIONS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 1115

Sponsor: Sen. Roger Kahn, M.D.

Senate Bill 1117

Sponsor: Sen. John Moolenaar

Senate Bill 1118

Sponsor: Sen. Joe Hune

House Committee: Judiciary

Senate Committee: Insurance

Complete to 12-11-12

A SUMMARY OF SENATE BILLS 1115, 1117, & 1118 AS PASSED BY THE SENATE 11-29-12

Senate Bill 1115 would establish requirements for the entry of judgments in medical malpractice actions.

Senate Bill 1117 would describe the persons against whom a medical malpractice action could be maintained and would establish criteria for an expert witness in a medical malpractice action against a party who was not a licensed health professional.

Senate Bill 1118 would limit the period of time for bringing a medical malpractice action on behalf of a deceased person and would prohibit prejudgment interest on costs or attorney fees awarded in a medical malpractice action.

The provisions amended or added by the bills would only apply to actions in which the cause of action arose on or after the applicable bill took effect.

Senate Bill 1115 would amend the Revised Judicature Act (MCL 600.1483 et al.) to, among other things, do the following:

- Apply Section 6306, which prescribes the order and the amounts in which the order of judgment must be entered, only to an order of judgment entered in a personal injury action other than an action for medical malpractice.
- Add a new section (Section 6306A) that is similar to Section 6306 that would apply only to medical malpractice actions.
- Establish the manner in which past and future noneconomic damages would be reduced per the requirements of Section 1483.
- Establish the manner in which the total judgment would be reduced if liability were determined to be joint and several. When reducing a judgment amount under this provision, the reduction would have to be performed before awarding any allowable interest, but after making all other required adjustments to the verdict.

- Revise the definition of "gross present cash value" to mean the total amount of future damages reduced to present values at a rate of 5% per year, compounded annually, for each year in which those damages will accrue, as found by the trier of fact under Section 6305(1)(b). (Highlighting denotes changes.)
- Revise the definition of "noneconomic loss" to mean damages or loss due to pain, suffering, inconvenience, physical impairment, or physical disfigurement, loss of society and companionship, whether claimed under Section 2922 or otherwise, loss of consortium, or other noneconomic loss. (Highlighting denotes changes.)

Senate Bill 1117 would amend the Revised Judicature Act (MCL 600.1269 and 600.2912) to:

** Allow a civil action for medical malpractice to be maintained against any person who is or who holds himself/herself/itself out to be a licensed health care professional or licensed health facility or agency (or its employee or agent) and that is engaging in or otherwise assisting in medical care and treatment, regardless of whether the person is engaging in the practice of the health profession in a sole proprietorship, partnership, professional corporation, or other business entity.

"Licensed health facility or agency" would not include a health maintenance organization (HMO) licensed under the Insurance Code. "Person" would mean an individual, partnership, corporation, association, governmental entity, or other legal entity. Further, a provision allowing malpractice to be admitted in evidence as a defense to an action for services rendered by a member of a state licensed profession or a person holding himself or herself out to be a member of a state licensed profession would also apply to an unlicensed individual.

** Currently, in an action alleging medical malpractice, a person may not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional and meets listed criteria. The bill would limit this provision to testimony given against or on behalf of a party who is a licensed health professional.

** In an action alleging medical malpractice involving a party who is not a licensed health professional, the bill would specify that a person could not give expert testimony on the appropriate standard of practice or care against or on behalf of the nonlicensed health professional unless the person met the following criteria:

- Specializes at the time of the occurrence that is the basis for the action in the same health profession as the party against whom or on whose behalf the testimony is offered.
- During the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of professional time to the active clinical practice of the same health profession as the party for or against whom the testimony was offered and/or the instruction of students in an accredited health professional school or accredited residency or clinical research program in

the same health profession as the party for or against whom the testimony was offered.

Senate Bill 1118 would amend several sections of the Revised Judicature Act (MCL 600.2912e et al.). Currently, the act specifies that if a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law could be commenced (begun) by the personal representative of the deceased person at any time within two years after letters of authority are issued even though the period of limitations has run. The bill would add the following provisions:

- If the action that survives by law is an action alleging medical malpractice, the two-year period runs from the date the letters of authority are issued to the first personal representative of an estate. Except as provided below, the issuance of subsequent letters of authority would not enlarge the time within which the action could be commenced.
- If a personal representative dies or is adjudged by a court to be legally incapacitated within two years after letters are issued, the successor personal representative could commence an action alleging medical malpractice that survives by law within one year after the personal representative died or was adjudged by a court to be legally incapacitated.
- Notwithstanding the above, an action could not be commenced later than three years after the period of limitations has run.

Further, the act now allows interest on a money judgment to be recovered in a civil action. Section 6013(8) details how interest on a money judgment is calculated for complaints filed on or after January 1, 1987. The bill would add that in an action for medical malpractice, interest under this provision on costs or attorney fees awarded under a statute or court rule is not calculated for any period before the entry of the judgment.

FISCAL IMPACT:

Senate Bill 1115 would have no fiscal impact on state or local government. Senate Bill 1117 would have an indeterminate fiscal impact on the judiciary. To the extent that additional malpractice cases may be filed under the bill, courts may face higher costs due to an increase in caseload. There are no data to indicate how many new cases would be filed because of this bill. Senate Bill 1118 would have an indeterminate fiscal impact on the judiciary. Limitations in the time period in which a malpractice action may be brought could result in a slight decrease in caseload of medical malpractice cases, thus leading to decreased costs to the court. The number of cases that would be affected by the bill is not known.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Erik Jonasson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.